

DUPLICATE ORIGINAL - RAILROAD COPY

AUDIT 247790

XC 14091

01-1162

LICENSE AND CROSSING AGREEMENT

THIS LICENSE AND CROSSING AGREEMENT ("Agreement") is made this 29th day of December, 2001, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, on behalf of its Department of Aviation ("City"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRC") and SBC METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

The parties covenant and agree as follows:

1. Consideration. City makes this agreement in consideration of UPRC and District performing the covenants herein and for other good and valuable consideration to the City, the receipt of which is hereby acknowledged.

2. License and Consent. The City hereby grants to UPRC for the sole purpose of constructing, using, maintaining, controlling, operating and repairing a railroad and railroad right of way ("Railroad Facilities") the following privileges: (a) a license ("License") across, over and under the real property legally described on Exhibit A and depicted on Exhibit A-1, both attached hereto and incorporated herein by this reference and, (b) the consent of the City ("Consent") to cross upon, over and under the lands where the City has a perpetual easement as set forth in the legal description described on Exhibit B and depicted on Exhibit B-1, both attached hereto and incorporated herein by this reference (hereinafter the lands described in Exhibit A and the Exhibit B are referred to as the "Premises").

3. Term. Subject to the provisions hereof, the privileges granted herein shall commence upon execution of this Agreement by the parties and shall continue until terminated as provided in this Agreement.

4. Termination. This Agreement may be terminated by the City only in the event of a) abandonment of the Railroad Facilities by a railroad for a period of two (2) years, or b) failure by UPRC to comply with any or all of the provisions and conditions of this Agreement where such failure continues for a period of ninety (90) days after written notice from the City to UPRC; provided, however, if the nature of the failure is such that more than ninety (90) days are reasonably required for its cure, the City shall not have the right to terminate this Agreement if any party hereto commences the cure within such ninety (90) days and thereafter diligently and continuously prosecutes such cure to completion. Any failure of the District to perform its obligations under this Agreement shall in no event affect the rights granted to UPRC under this Agreement.

5. Restoration. Within a reasonable time period after the relinquishment or termination of the privileges herein granted, UPRC shall vacate the Premises, remove all the Railroad Facilities and any property of UPRC therefrom, and restore the Premises to a condition reasonably satisfactory to the City. If UPRC shall fail or neglect to remove said property and so restore the Premises, then, at the option of the City, such property shall either

become the property of the City without compensation therefor, or the City may cause it to be removed and the Premises restored at the expense of the UPRC, and no claim for damages against the City, or its officers or agents, shall be created or made on account of such removal and restoration.

6. Construction. It is understood that the privileges granted herein are effective only insofar as the rights of the City in the Premises to be occupied are concerned, and that such grant does not relieve UPRC from the necessity of obtaining grants from the owners, if any, of the fee and/or other interests therein.

Subsequent to the date of this Agreement, UPRC agrees not to perform any substantial work or construction or alteration of improvements on the Premises without the prior written consent of the City or its authorized representatives. Prior to commencement of any such substantial work on the Premises, UPRC shall submit improvement plans, design plans and construction contracts for review and written approval of the City or its authorized representative, which approval shall not be unreasonably withheld. For purposes of this Agreement, the term "substantial work" means construction or alteration work with (a) an estimated cost (not including "soft" costs such as design costs) of Fifty Thousand Dollars (\$50,000) or more in year 2001 dollars, or (b) which alters the lateral or vertical alignment of the UPRC trackage by more than six (6) inches.

Prior to commencement of any substantial work on the Premises subsequent to the date of this Agreement (other than by UPRC's own forces), UPRC's contractors shall furnish bonds to City assuring 100% performance and labor and material payment of its construction activity in the amount of 100% of the construction contract price. Such bonds shall guarantee prompt and faithful performance of UPRC's construction contract and prompt payment by its contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools and equipment used directly or indirectly by said contractors, subcontractors and suppliers in the prosecution of the work provided for in UPRC's construction agreement and shall protect the City from any liability, losses or damages therefrom. The payment bond and the performance bond shall name UPRC as the obligee, with the City named on the dual obligee rider. UPRC shall furnish a copy of such bonds to the City's Public Works Department. All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City. If a bond is executed by an attorney-in-fact of the surety, a power of attorney must be attached to the bond.

7. Retained Rights of City. City reserves the right of use and occupancy of the Premises for underground utilities, including drainage channels, and pedestrian, equestrian and bicycle crossings, provided that the plans therefor and any entry by City or its contractors or subcontractors in connection therewith comply with UPRC's then-current reasonable standards and requirements. The City also reserves the right of use and occupancy of the Premises for a vehicular crossing, subject to the provisions of paragraph 9 herein. The City in granting this license recognizes the nature of the service UPRC provides to its customers and

agrees that the City's rights reserved under this license may not interfere with the safe and efficient operation of a freight railroad on the Premises.

8. Cost to City. The exercise of the privileges herein granted shall be without cost or expense to the City. Any additional costs for City to utilize the Premises in connection with the rights retained by the City under Paragraph 7 above resulting from the Railroad Facilities shall be the responsibility of the person or entity that requests the use of the Premises, e.g., the utility company that wishes to install a facility.

9. Crossings/Grade Separation. (a) If the City determines upon written notice to the UPRC and District that the Railroad Facilities upon the Premises interfere with the use of said land by the City for crossings for pedestrian, equestrian or bicycle access, City shall have the right to require that such crossings be grade separated. The costs of such grade separation shall be borne by the District. The District hereby acknowledges that it has the authority to pay for such additional costs of grade separation. Should the City require a vehicular crossing in the future, the District would only be responsible for providing an at-grade crossing for vehicular traffic. All at-grade crossings shall be subject to approval by UPRC, and City shall enter into a public grade crossing agreement in a form reasonably acceptable to City and UPRC.

(b) In the event that the District or its contractor is required to do any work in the Premises and/or adjacent to the Premises to construct a crossing for equestrian, pedestrian, bicycle and vehicular uses, pursuant to its obligation set forth in Paragraph 9 above, the District or its contractor shall be subject to the following requirements:

- i. The City and UPRC shall have the right to review and approve the construction plans;
- ii. Prior to construction, the District or its contractor shall furnish bonds to the City as set forth in Paragraph 6 herein;
- iii. Any damage to City property shall be repaired or replaced by the District or its contractor as set forth in Paragraph 11 herein;
- iv. Insurance shall be kept in force by the District or its contractor in accordance with the requirements of Paragraph 13 herein;
- v. The District or the contractor shall indemnify the City as set forth in Paragraph 14 herein;
- vi. All work performed on or adjacent to the Premises hereunder shall be in compliance with the applicable provisions of the City's charter, ordinance and rules and regulations, and with all applicable Colorado and federal laws; and

- vii. District and its contractor shall enter into UPRC's then-current form of right of entry agreement.

10. Maintenance. The UPRC shall be responsible for the maintenance of the Railroad Facilities.

11. Damage to City Property. Any property of the City damaged or destroyed by UPRC incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by UPRC to the satisfaction of the City, or in lieu of such repair or replacement, UPRC shall, if so required by the City, and at its option, pay to the City money in an amount sufficient to compensate for the loss sustained by the City by reason of, damage to or destruction of City property.

12. Compliance With Environmental Requirements. UPRC in conducting any activity on the Premises, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. For purposes of this Agreement the terms "Hazardous Materials" shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), used oil or any petroleum products, natural gas, radioactive source material, pesticides, and any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

UPRC shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements for UPRC's use of the premises.

13. Insurance. The parties acknowledge that UPRC is currently self-insured. Should UPRC no longer self insure, then UPRC shall keep in force at all times during the term of this Agreement comprehensive general liability insurance coverage with limits of Two Million Dollars per occurrence and Four Million Dollars in the aggregate.

14. Indemnification. UPRC hereby agrees to release and indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including without limitation worker's compensation claims against the City, of or by anyone whomsoever, which

with respect to any of the foregoing in any way results from, or arises out of, directly or indirectly, its use or occupancy of any portion of the Premises and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of the Grantees; provided, that the UPRC need not release, indemnify or save harmless the City, its officers, agents and employees from claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever resulting from the negligence of the City's officers, agents and employees, or from any exercise by City of its retained rights under Paragraph 7 above. The scope of this indemnification is not limited to third party claims. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of UPRC.

15. Notices. All notices required to be given to the parties hereunder shall be in writing and sent by certified mail, return receipt requested, to:

City:

Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

Manager of Public Works
City and County of Denver
1437 Bannock Street, Room 379
Denver, Colorado 80202

Manager of Aviation
Denver International Airport
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

UPRC:

Assistant Vice President-Real Estate
Union Pacific Railroad Company
1800 Farnam Street
Omaha, Nebraska 68102

Assistant Vice President-Law
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, Nebraska 68179

District: John Bezzant, President
SBC Metropolitan District
165 S. Union Boulevard, Suite 852
Lakewood, Colorado 80228

With copy to: Mary Ann McGeady
McGeady Sisneros & Wollins
1675 Broadway, Suite 2100
Denver, Colorado 80202

Any party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to City, UPRC or the District.

16. Compliance with Laws. All persons or entities utilizing the Premises pursuant to this Agreement must observe and comply with the applicable of the charter, ordinances, and rules and regulations of the City and with all applicable Colorado and federal laws.

17. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

18. Applicable Law. This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

19. Binding Effect. The benefits and burdens created by this Agreement shall be construed as covenants running with the land and shall be binding upon the parties' successors and assigns.

20. Nondiscrimination. In connection with the performance of work under this Agreement, UPRC and District agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

21. Entire Agreement. The parties agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the

respective parties unless included herein are null and void and of no effect. No amendments, unless expressly reserved to the City herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

22. Final Approval. This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all signatories of the City and County of Denver.

[END OF PAGE]

IN WITNESS WHEREOF, City has executed this instrument the day and year first above written.

ATTEST:

By Rosemary E. Rodriguez
ROSEMARY E. RODRIGUEZ, Clerk
and Recorder, Ex-Officio Clerk of the
City and County of Denver



CITY AND COUNTY OF DENVER

By At. Foote
ACTING MAYOR

APPROVED AS TO FORM:

J. WALLACE WORTHAM, JR. Attorney
for the City and County of Denver

By JoAnn Weinstein

RECOMMENDED AND APPROVED:

By Bruce Baumgartner
Manager of Aviation

By Lesley B. Shuman
on pn Manager of Public Works

REGISTERED AND COUNTERSIGNED:

By Frank D. Spreyer
Auditor

XC 14091


Deputy Auditor

UNION PACIFIC RAILROAD COMPANY

By: 

Title: Assistant Vice President

ATTEST:

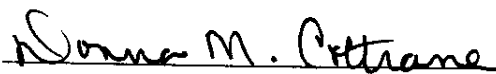
By: 

Title: Assistant Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On October 16, 2001, before me, a Notary Public in and for said County of Douglas and State of Nebraska, personally appeared R. David Uhrich and C.J. Meyer, as Assistant Vice President and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public

(SEAL)

SBC METROPOLITAN DISTRICT

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

STATE OF COLORADO

~~Jefferson~~

~~CITY AND COUNTY OF DENVER~~

)

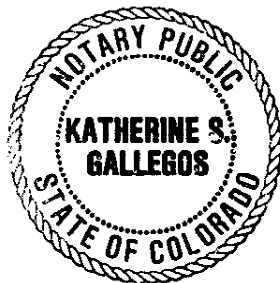
) ss.

)

The foregoing instrument was acknowledged before me this 18th day of October, 2001 by John E Bezzant as President and _____ as _____ of SBC Metropolitan District.

My commission expires

2-22-03



Katherine S Gallegos
Notary Public

KATHERINE S Gallegos
431 Harlem
Lakewood, CO
80226

Exhibit A
Legal Description for Crossing Property

LEGAL DESCRIPTION
EXHIBIT A

A PARCEL OF LAND LOCATED IN THE NORTH EAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE SPECIFICALLY AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 22; THENCE ALONG THE EASTERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION N00°33'22"W, 788.80 FEET; THENCE LEAVING SAID EASTERLY LINE S89°27'36"W, 95.52 FEET TO A POINT ON THE SOUTHWESTERLY PROPERTY LINE FOR THE PROPOSED STAPLETON BUSINESS CENTER; THENCE ALONG SAID SOUTHWESTERLY LINE S31°33'49"W, 567.26 FEET TO A POINT ON THE NORTHERLY LINE OF AN EXISTING 30 FOOT RAILROAD EASEMENT (REC. NO. 9800126772) AND THE TRUE POINT OF BEGINNING; THENCE 100.36 FEET ALONG SAID NORTHERLY LINE BEING A NON TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 543.00 FEET, A CENTRAL ANGLE OF 10°35'25", AND A CHORD WHICH BEARS S62°12'27"E, 100.22 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 70; THENCE LEAVING SAID NORTHERLY EASEMENT LINE AND ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, S31°33'49"W, 30.01 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID RAILROAD EASEMENT; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG SAID SOUTHERLY LINE 100.41 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 513.00 FEET, A CENTRAL ANGLE OF 11°12'52" AND A CHORD WHICH BEARS N62°25'49"W, 100.25 FEET TO A POINT ON SAID SOUTHWESTERLY LINE OF THE PROPOSED STAPLETON BUSINESS CENTER; THENCE LEAVING SAID SOUTHERLY EASEMENT LINE AND ALONG SAID SOUTHWESTERLY LINE N31°33'49"E, 30.40 FEET TO THE TRUE POINT OF BEGINNING.

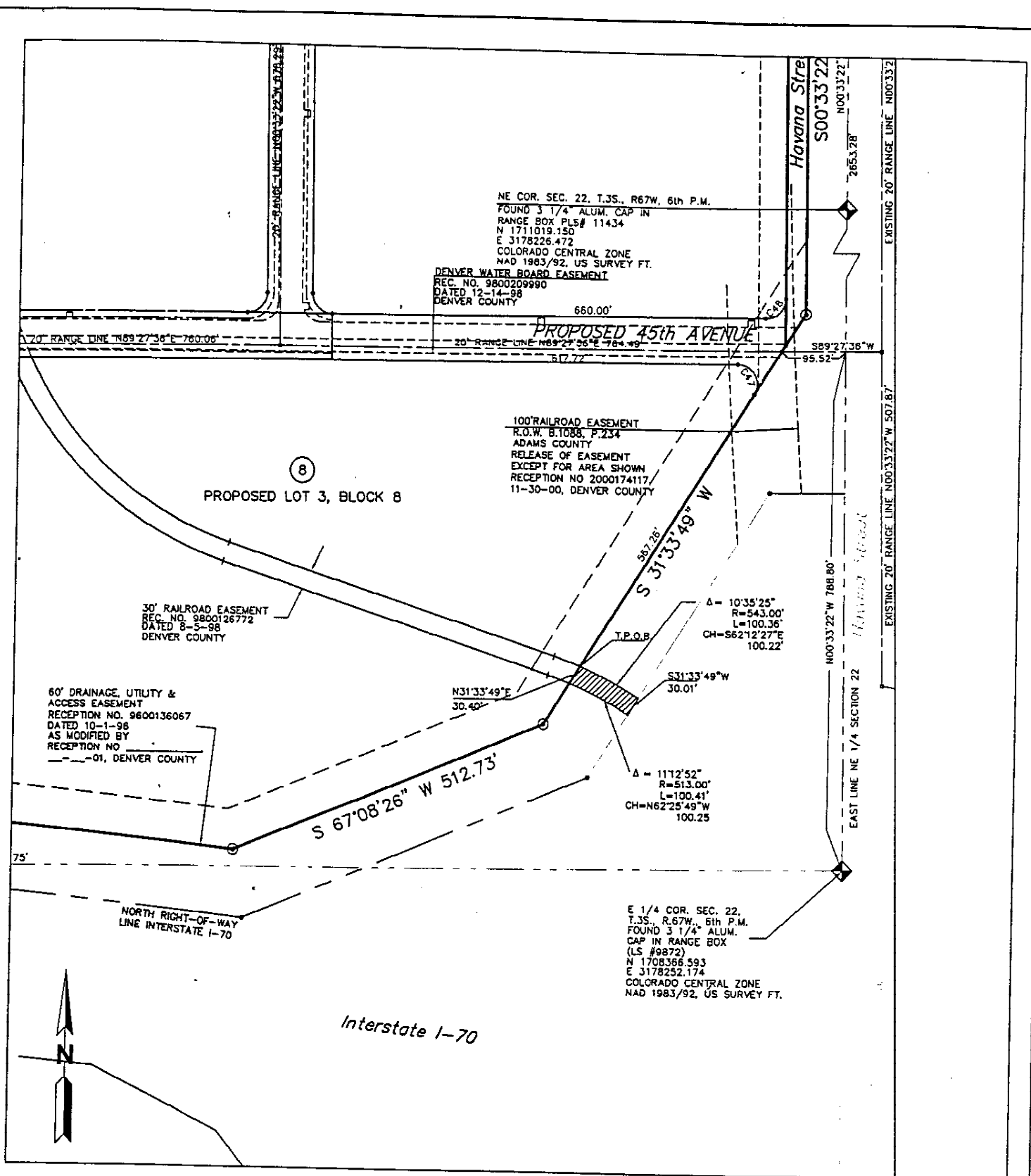
SAID PARCEL CONTAINS 3011 SQUARE FEET AND 0.069 ACRES, MORE OR LESS.

BASIS OF BEARINGS: THE EAST LINE OF THE NE QUARTER OF SECTION 22, T.3S., R.67W., 6TH P.M. ASSUMED TO BEAR N00°33'22"W AS MONUMENTED THE EAST QUARTER CORNER OF SECTION 22 BEING A 3 1/4" ALUM. CAP (PLS 9872) AND THE NORTHEAST CORNER OF SECTION 22 BEING A 3 1/4" ALUM. CAP (PLS 11434).

PREPARED BY: CHRIS STRAWN
REVIEWED BY: RICHARD NOBBE, P.L.S.
FOR AND ON BEHALF OF
MARTIN/MARTIN
4251 KIPLING STREET
WHEAT RIDGE, COLORADO 80033
SEPTEMBER 19, 2001
PROJECT NO. 12603.C.63



200110005



0 100 200
 SCALE 1" = 200'

EXHIBIT A

SEPTEMBER 21, 2001



MARTIN / MARTIN
 CONSULTING ENGINEERS

4251 KIPLING
 P.O. Box 4001
 WHEAT RIDGE, CO 80034
 303.431.6100
 FAX 303.431.4028

Exhibit B
Legal Description for Easement Property

LEGAL DESCRIPTION
EXHIBIT B

A PARCEL OF LAND LOCATED IN THE NORTH EAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE SPECIFICALLY AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 22; THENCE ALONG THE EASTERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION N00°33'22"W, 788.80 FEET; THENCE LEAVING SAID EASTERLY LINE S89°27'36"W, 95.52 FEET TO A POINT ON THE SOUTHWESTERLY PROPERTY LINE FOR THE PROPOSED STAPLETON BUSINESS CENTER; THENCE ALONG SAID SOUTHWESTERLY LINE S31°33'49"W, 567.26 FEET TO A POINT ON THE NORTHERLY LINE OF AN EXISTING 30 FOOT RAILROAD EASEMENT (REC. NO. 9800126772) AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE S31°33'49"W, 30.40 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE 34.95 FEET ALONG A NON TANGENT CURVE BEING THE SOUTHERLY LINE OF SAID RAILROAD EASEMENT TO THE LEFT HAVING A RADIUS OF 513.00 FEET, A CENTRAL ANGLE OF 03°54'12", AND A CHORD WHICH BEARS N69°59'20"W, 34.94 FEET TO A POINT OF TANGENCY; THENCE CONTINUING ALONG SAID SOUTHERLY LINE N71°56'26"W, 26.50 FEET; THENCE LEAVING SAID SOUTHERLY LINE N31°33'49"E, 30.85 FEET TO A POINT ON THE NORTHERLY LINE OF SAID RAILROAD EASEMENT; THENCE ALONG SAID NORTHERLY LINE S71°56'26"E, 19.29 FEET TO A POINT OF CURVATURE; THENCE CONTINUING ALONG SAID NORTHERLY LINE 42.06 FEET ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 543.00 FEET, A CENTRAL ANGLE OF 04°26'18", AND A CHORD WHICH BEARS S69°43'17"E, 42.05 FEET TO THE TRUE POINT OF BEGINNING.

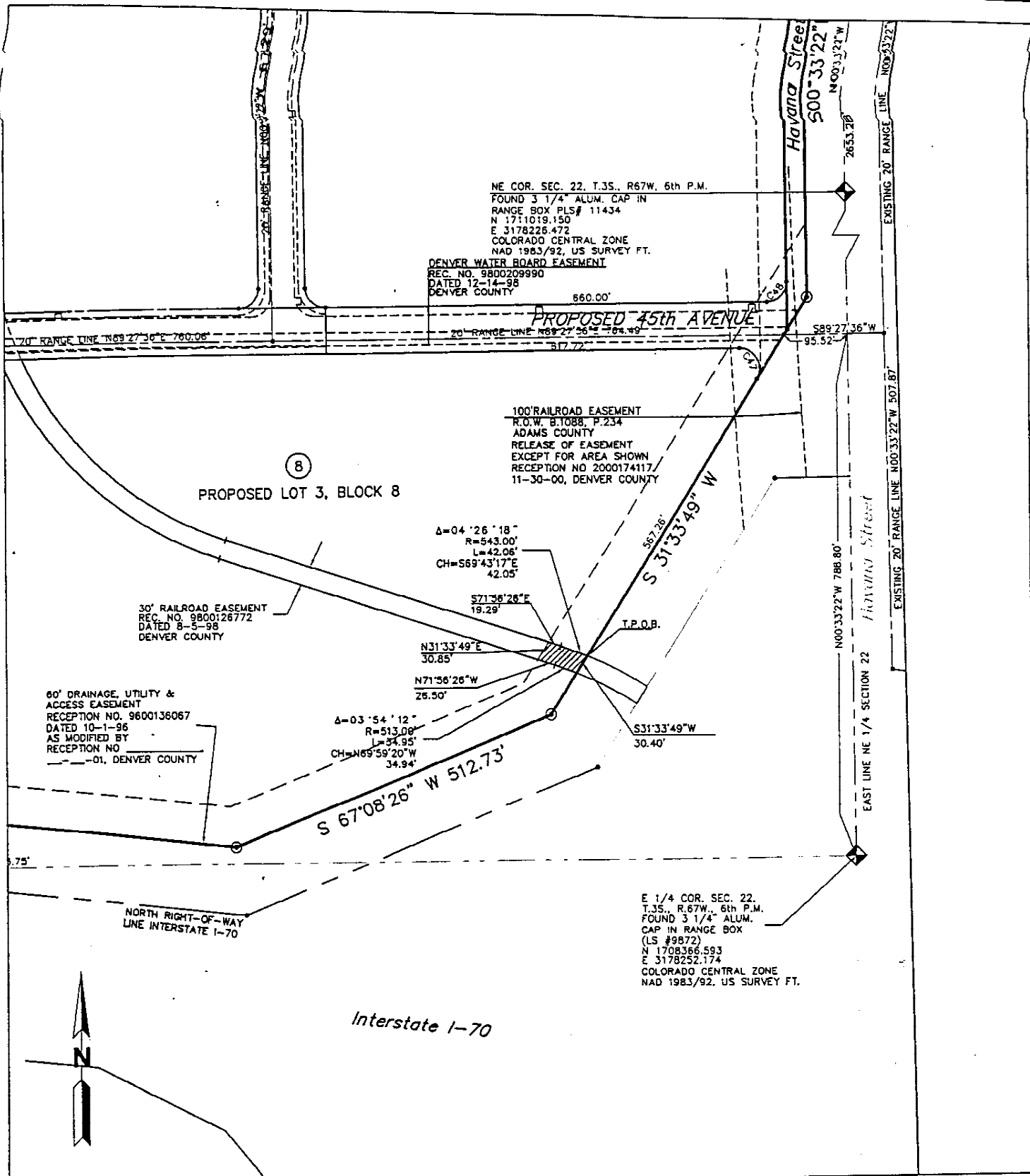
SAID PARCEL CONTAINS 1841 SQUARE FEET AND 0.042 ACRES, MORE OR LESS.

BASIS OF BEARINGS: THE EAST LINE OF THE NE QUARTER OF SECTION 22, T.3S., R.67W., 6TH P.M. ASSUMED TO BEAR N00°33'22"W AS MONUMENTED THE EAST QUARTER CORNER OF SECTION 22 BEING A 3 1/4" ALUM. CAP (PLS 9872) AND THE NORTHEAST CORNER OF SECTION 22 BEING A 3 1/4" ALUM. CAP (PLS 11434).

PREPARED BY: CHRIS STRAWN
REVIEWED BY: RICHARD NOBBE, P.L.S.
FOR AND ON BEHALF OF
MARTIN/MARTIN
4251 KIPLING STREET
WHEAT RIDGE, COLORADO 80033
SEPTEMBER 19, 2001
PROJECT NO. 12603.C.63



2001100062



SEPTEMBER 21, 2001

0 100 200
 SCALE 1"=200'

EXHIBIT B



MARTIN / MARTIN
 CONSULTING ENGINEERS

4251 KIPLING
 P.O. BOX 4001
 WHEAT RIDGE, CO 80034
 303.431.6100
 FAX 303.431.4028

APPENDIX NO. 3

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.